



STATE OF NEVADA

BEFORE THE NEVADA COMMISSION ON ETHICS

In the Matter of the Request for Opinion
Concerning the Conduct of
LOWELL PATTON, Public Works Director,
City of Fernley,
State of Nevada,

Request for Opinion No.: 09-19C

Subject. /

INVESTIGATOR'S REPORT (Tab A):

Introduction:

On March 25, 2009, an Ethics Complaint was filed against Lowell Patton, (Patton), public works director of the City of Fernley (Fernley), State of Nevada, alleging that he used the city issued credit card for his personal benefit.

Jurisdiction:

As the Fernley public works director, no dispute exists that Patton is a public officer as defined by NRS 281A.160. Therefore, the Nevada Commission on Ethics (Commission) has jurisdiction to render an opinion in this matter, pursuant NRS 281A.280 and NRS 281A.440.

1 **Issues:**

2
3 The issue is whether Patton violated NRS 281A.400 (2) when he allegedly used his position to
4 benefit himself by using the city issued credit card for personal expenses.
5

6 **Request for Opinion No. 09-19C (Ethics Complaint). (Tab B):**

7
8 On March 25, 2009, an Ethics Complaint was filed by Sandra Mathewson (Mathewson). The
9 following is the summary of the allegations that:

10 Between May 2007 and September 2008, Patton violated NRS 281A.400.2 when he used the city
11 issued credit card on a numerous occasions to benefit himself.
12

13 **Notices of Additional Issues and Facts. (Tab C):**

14
15 During the course of investigation, additional facts and issues related to alleged violations of NRS
16 281A.400.2 were discovered by the Investigator. A Notice of Additional Issues and Facts was
17 mailed to Patton and his legal counsel Brent Kolvet, Esq. (Kolvet), on April 20, 2009. After a
18 subsequent investigation, a Second Notice of Additional Issues and Facts was mailed to Patton
19 and Kolvet on April 22, 2009.
20

21 **Response to Ethics Complaint. (Tab D):**

22
23 A response to an Ethics Complaint and the Notice of Additional Issues and Facts was received on
24 April 9, 2009. Patton's legal counsel Kolvet stated that Patton did not violate any provisions of
25 NRS 281A because all charges in question were related to the city business. In addition, Kolvet
26 stated that Mathewson appears to be on a "mission" to hurt the reputation of the City of Fernley
27 employees without providing any evidence to back up her allegations.
28

1 A second response from Patton and Kolvet was received on April 20, 2009. The second response
2 included an explanation of the additionally alleged charges, and answers to investigator's
3 questionnaire sent to Patton on April 10, 2009. A third response related to Second Notice of
4 Additional Issues and Facts was received on April 24, 2009. The response included the previously
5 completed questionnaire with additional explanations. The April 24, 2009 response included print
6 out of a PowerPoint presentation from conferences in San Antonio, TX, and Las Vegas, NV. Only
7 the first page of both presentations will be included in the Commission's exhibits due to its
8 irrelevance to this case.

9
10 **Investigation Summary:**

11
12 I interviewed the following individuals and reviewed the following documents:

13
14 **Witnesses interviews and responses (Tab E):**

- 15
16
 - Sandra Mathewson, requestor of Ethics Complaint No. 09-19C, fax on April 24,
 - 17 2009. (Exhibit 1).
 - 18 • Lowell Patton, Subject of the Ethics Complaint No.09-19C, via US mail on April
 - 19 9 and 20, 2009 and via e-mail on April 24, 2009. (Investigator's questionnaire
 - 20 included under second and third response in Tab D).

21
22 **Documents. (Tab F):**

23
24 I obtained and reviewed the following documents and materials relevant to the investigation:

- 25
26
 - Fernley credit card statements received from Sandra Mathewson on April 17,
 - 27 2009. (Exhibit 2).

- Fernley credit card statements received from Sandra Mathewson on April 13, 2009. (Exhibit 3).
- Fernley Hospitality & Civic Function Guidance, received via e-mail from Sandra Mathewson, on April 3, 2009. (Exhibit 4).
- Fernley credit card statements received from Sandra Mathewson, on April 3, 2009. (Exhibit 5).
- Updates and revisions to the Fernley Travel Expenses Policy. Received from Sandra Mathewson on April 2, 2009. (Exhibit 6).
- Minutes from Fernley City Council meeting on October 15, 2008. (Exhibit 7).
- Minutes from Fernley City Council meeting on October 1, 2008 (Exhibit 8).
- Excerpt from Fernley Personnel Manual, sections 5.1 to 6.2. (Exhibit 9).
- E-mail from Bonnie Duke received on October 15, 2008. (Exhibit 10).
- Fernley Credit Card Policies, effective March 20, 2008. (Exhibit 11).
- Fernley Credit Card Policies, effective July 1, 2003. (Exhibit 12).
- Public Works Director Job Description from Fernley Website. (Exhibit 13).
- U.S. General Services Administration per diem rates for Nevada and Texas, FY 2007. (Exhibit 14).

Investigative findings:

The following are my investigative findings:

Patton is and has been employed by the City of Fernley as a public works director since November 2004.

Patton stated in his first response on April 9, 2009 that all charges were incurred during the course of conducting city business. (Tab D, response received April 9, 2009). He further

1 explained the credit card charges in the Investigator's questionnaire in his second response on
2 April 20, 2009. (Tab D, response received April 20, 2009).

3
4 I questioned Patton on his understanding of Fernley Credit Card policy. Patton responded that
5 "the City of Fernley MasterCard is to be used primarily for travel expenses, but may be used for
6 necessary purchases of supplies and services when authorized." (Tab D, response received April
7 20, 2009, question 4). Patton further added that "reasonable and necessary travel expenses will
8 be reimbursed (if at the traveler's expense) when authorized. When this travel policy is taken in
9 concert with the City Credit Card Policy, when travelling, only reasonable and necessary
10 expenses should be placed on the City MasterCard and those must be verified with a receipt."
11 (Tab D, response dated April 20, 2009, question 6).

12
13 Out of the nine allegations brought in this complaint, seven are for meal and beverage purchases
14 in Fernley. Although Patton's explanations differ with every purchase, they all appear to have the
15 same justification: "business related."

16
17 Starting from the most recent allegation, Patton explained the \$36.48 charge in Starbucks in
18 Fernley, on September 16, 2008 as "refreshments for a Water Treatment Plan Partnering
19 Meeting." The same explanation applies for \$42.78 purchase in Subway, Fernley, on the same
20 day. (Tab D, response received April 24, 2009).

21
22 Although Patton mentioned "necessary purchases" when explaining his understanding of the
23 Fernley Credit Card Policy, he purchased two shirts on August 29 and 31, 2008 from the Land's
24 End company for the total of \$374.58. (One order included two separate charges). Patton
25 explained that the shirts will be treated as "uniforms" if their life extends beyond his
26 employment. (Tab D, response received April 20, 2009).

1 Patton's \$38.31 expense in Buffalo Wild Wings Restaurant in Reno, on August 14, 2008 was
2 explained as a business related discussion between the City of Fernley and Sierra Pacific Power
3 Company on a water treatment facility. The time printed on the receipt is shortly before 9 p.m.
4

5 When justifying the \$47.93 purchase in Starbucks in Fernley on August 13, 2008, Patton stated
6 that "it is the State of Nevada's (sic) practice for the hosting agency to provide morning
7 refreshments." (Tab D, response received April 9, 2009). Although Patton is relying on the State
8 of Nevada "practices", it is not clear which practices he's referring to. In addition, the City of
9 Fernley never adopted, or followed any State of Nevada per diem rates. Another purchase in
10 Starbucks occurred on February 28, 2008. Patton explained the \$137.92 purchase as
11 "refreshments for Partnering Meeting for the Water Treatment Plant project." (Tab D, response
12 received April 24, 2009).
13

14 The \$60.31 gasoline purchase on January 15, 2008 at ExxonMobil station in Fernley was
15 allegedly for a city vehicle, but Patton has no receipt and did not provide any mileage log or
16 other evidence of such claim. (Tab D, response received April 24, 2009).
17

18 On July 20, 2007, Patton and Gary Bacock, the city manager at that time, met with two
19 individuals from the Nevada Cement Company at the Wigwam Restaurant in Fernley. According
20 to Patton, the nature of the discussion revolved around a public works project that Nevada
21 Cement Company was interested in, but had not applied yet. Allegedly, the Nevada Cement
22 Company sought the Public Works Department's perspective on the project. Patton stated that he
23 was directed by Bacock to pay for the lunch for all four individuals to avoid the perception of
24 impropriety between the city and the future Special Use Permit applicant. Patton stated the
25 \$30.86 purchase was "coded to budgetary line item under travel and training." (Tab D, response
26 received April 9, 2009).
27
28

1 Finally, the last allegation relates to an expense for \$38.01 in Bully's Restaurant in Fernley, on
2 May 10, 2007. Patton's explanation of this expense is "a lunch meeting to discuss current issues
3 with the progress of water treatment plant." The meeting was attended by Patton and two
4 individuals from Camp, Dresser & McKee (CDM) a consulting, engineering and construction
5 company. Patton used the city credit card to purchase meals for himself and two representatives
6 from CDM. (Tab D, response received April 9, 2009).

7
8 At the time of allegations brought by the complainant, no definition of "travel status" was
9 included in the City of Fernley Personnel Manual, and the policy on meal purchases was vague.
10 (Exhibit 9). However, the policy includes the words "reasonable and necessary", which is also
11 Patton's understanding. Although business related, a meeting across from the Fernley City Hall
12 can hardly be defined as travel. (Tab D, response received April 20, 2009, question 4 and 6).

13
14 The allegations in the complaint related to trips to conferences in Las Vegas, NV and San
15 Antonio, TX appear to have no merit. Both are well documented in Patton's response and
16 expenses appear to be reasonably related to his position. (Tab D, response received April 20,
17 2009). Although Fernley did not have set per diem rates at the time of alleged violations, the
18 expenses are comparable to the per diem rates used by the federal government and the State of
19 Nevada. (Exhibit 14).

20
21 **Investigative conclusion:**

22
23 Considering Patton's experience and his understanding of City of Fernley Policies, I conclude
24 that just and sufficient cause exists for the Commission to render an opinion on whether Patton
25 violated the Ethics in Government Laws on dates noted in this report.

26
27 The evidence DOES support the claim that on dates as alleged in the complaint, Lowell Patton
28 violated NRS 281A.400.(2). After reviewing the evidence and NRS 281A.400, the

1 recommendation is that the Panel must find just and sufficient cause EXISTS for the
2 Commission to render an opinion on the allegation that the Lowell Patton used his position to
3 obtain unwarranted privileges when he used city issued credit card to benefit himself on:
4

- 5 1. September 16, 2008 for the \$36.48 charge in Starbucks in Fernley.
- 6 2. September 16, 2008 for the \$42.78 charge in Subway in Fernley.
- 7 3. August 31, 2008 and August 29, 2008 for \$266 and \$108.58 charges for a purchase of
8 two shirts from Land's End Company. (Two separate charges for the same order).
- 9 4. August 14, 2008 for the \$38.31 charge in Buffalo Wild Wings restaurant in Reno, NV.
- 10 5. August 13, 2008 for the \$ 47.93 charge in Starbucks in Fernley.
- 11 6. February 28, 2008 for the \$ 137.92 charge in Starbucks in Fernley.
- 12 7. January 15, 2008 for the \$60.31 charge in Exxon/Mobil station in Fernley.
- 13 8. July 20, 2007 for the \$30.86 charge in the Wigwam restaurant in Fernley.
- 14 9. May 10, 2007 for the \$38.01 charge in Bully's restaurant in Fernley.

15
16
17 On the other hand, the evidence DOES NOT support the claim that between September 7 and 13,
18 2007, and on July 23, 2007, Lowell Patton violated NRS 281A.400 (2) on the credit card charges
19 listed below. After reviewing the evidence and NRS 281A.400, the recommendation is that the
20 Panel find just and sufficient cause DOES NOT EXIST for the Commission to render an opinion
21 on the allegation that the Lowell Patton used his position to obtain unwarranted privileges when
22 he used city issued credit card to benefit himself on:
23

- 24 1. September 13, 2007 for the \$723.53 charge for lodging in Days Inn in San
25 Antonio, TX.
- 26 2. September 12, 2007 for the \$33.67 charge in Yokonuku Susi restaurant in San
27 Antonio, TX.

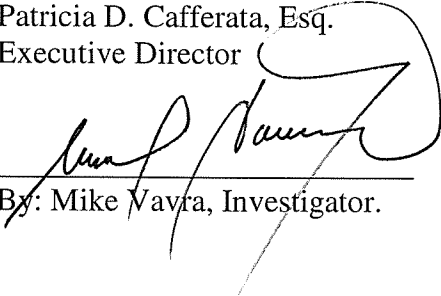
3. September 11, 2007 for the \$50.33 charge in County Line Riverwalk Barbecue restaurant in San Antonio, TX.
4. September 7, 2007 for the \$10.77 charge in Pat O'Brian's restaurant in San Antonio, TX.
5. July 23, 2007 for the \$344.27 charge for Frankin seminar in Las Vegas, NV.
6. July 23, 2007 for the \$98.10 charge for lodging in Suncoast Hotel in Las Vegas, NV.
7. July 23, 2007 for the \$260.80 charge for airfare to Las Vegas, NV.

Therefore, on the allegation in Ethics Complaint No. 09-19C, I conclude that just and sufficient cause exists for the Commission to render an opinion on whether Lowell Patton violated the Ethics in Government Laws on the dates noted above.

Dated this 27 day of April 2009.

NEVADA COMMISSION ON ETHICS

Patricia D. Cafferata, Esq.
Executive Director


By: Mike Vavra, Investigator.